

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 12, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Darryl Judson
Walter Schmidt

BOARD MEMBERS ABSENT: Walter Tarrmann

SECRETARY TO THE BOARD: Sheri K. Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Mark Stirmel, BA05:046, petitioner/owner
Pamela Doucette, BA05:074, petitioner
Peyton Muehlmeier, BA05:074, owner
Dorothy Grochowski, BA05:075, owner
Joe Pecor, BA04:026, owner
Bob Sokolowicz, unknown
Maribeth Nolder, BA05:075, petitioner
Steve Barnekow, BA05:073, neighbor
Tony Wineinger, BA05:073, owner
Sue Wineinger, BA05:073, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of September 28, 2005.*

The motion was seconded by Mr. Judson and carried unanimously.

NEW BUSINESS:

BA05:074 RUTH E. MUEHLMEIER FAMILY TRUST
Pamela Doucette—Petitioner

Mr. Judson *I move to approve the request for a variance from the guesthouse/in-law suite provisions with the following conditions:*

1. The proposed second residence shall contain only one story. A basement shall be permitted so long as it does not contain any exposure.
2. The proposed second residence and attached garage, including any covered porches, decks or patios must be a minimum of 1,500 sq. ft. in size and shall not exceed 2,300 sq. ft. in size.
3. The proposed residence and attached garage, including any decks, patios, and/or covered porches, decks or patios, must be meet all the locational requirements of the Ordinance.
4. Prior to the issuance of a zoning permit for the second residence, there shall be a 66-ft. wide access

easement provided to this property from N. Mill Road and recorded at the Waukesha County Register of Deeds. A registered land surveyor or professional engineer shall prepare the easement documents. Prior to recordation, the easement documents shall be reviewed and approved by the Town of Summit and Waukesha County Planning staff.

5. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division Staff, stating the property shall not be divided in the future. It shall also state that the second residence shall only be used by family members or guests of the family and shall never be utilized as a rental unit or as a means of income. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's Office, and a copy of the recorded document must be furnished to the Planning and Zoning Division Staff.
6. The driveway for the second residence shall be relocated so it is entirely outside of the Environmental Corridor.
7. Absolutely no disturbance of any kind is permitted within the Environmental Corridor. This means there shall be no grading or vegetation removal in the Environmental Corridor before, during or after construction.
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, any decks or patios, as well as any newly proposed sidewalks, stairs, walkways, and driveway, as well as all existing structures and driveways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. This survey must also show the newly created 66-ft. easement.
10. In order to ensure the construction of the proposed second residence does not result in any impacts to the Environmental Corridor, a detailed disturbance plan, showing existing and proposed footprints and the extent of all disturbance on the property (both temporary and permanent), must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that amount of disturbance be limited to the area shown on the survey in order to ensure that there are no temporary or permanent impacts to the Environmental Corridor as a result of this project. This disturbance plan may be combined with the Plat of Survey required in Condition No. 9.
11. Prior to issuance of a zoning permit, proof that the Town of Summit has approved more than two accessory buildings on this property must be furnished to County Planning & Zoning Division staff.

The motion was seconded by Mr. Bartholomew. Mr. Schmidt voted against and the motion carried 4-1.

The staff's recommendation was for denial.

The reasons for the decision, as stated in the Decision Sheet, are as follows:

Based upon the petitioner's application, comments made at the public hearing, and the Board's decision, all of which are incorporated herein by reference, the Board renders the above decision for the following reasons:

The variance to permit a second residence to be rebuilt on the property is warranted. The existing "guesthouse" has been on the property for many decades and the proposed second residence will only be slightly larger and in a similar location. As conditioned, the proposed construction will not result in any impact to the Environmental Corridor and will result in the creation of a 66-ft wide easement to serve both living units. In addition, a deed restriction will be filed not allowing a future land division and limiting the use of the structure for family members and guests of the family. It shall not be utilized as a rental unit or as a means of income for the property owners. As conditioned, the approval is within the spirit and intent of the Ordinance.

BA05:075 DALE NOLDER—PETITIONER

Paul Schultz left the room.

Mr. Schmidt

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report, with the following modifications to the conditions:

Condition #8 shall be changed to read: "No retaining walls are permitted within 75 feet of the Lake."

A thirteenth condition shall be added and shall read: "Prior to the issuance of a zoning permit, the detached garage must be removed from the property."

The staff's recommendation was for approval, with the following conditions:

1. The proposed residence, including the first and second floors, any decks, patios, and/or covered porches, decks or patios, must adhere to the required shore and floodplain setback.
2. The proposed residence, including the first and second floors, any decks, patios, and/or covered porches, decks or patios, must be located a minimum of 7 ft. from the lot lines in all locations.
3. The proposed residence, including the first and second floors, any decks, patios, and/or covered porches, decks or patios, must be located a minimum of 23 ft. from the right-of-way of Road J.
4. The attached garage must be located on the basement level.
5. The footprint of the proposed residence must be reduced in size so that it does not exceed 1,000 sq. ft. in size. This will result in 7,139 sq. ft. of open space on the property.
6. The proposed residence shall be reduced in size so that the total square footage of the first and second floors of the residence, any covered decks, covered patios and/or covered porches shall not exceed 19.5% of the lot area (1,587 sq. ft.).
7. The proposed residence must not exceed three stories (including any exposed basement level), as viewed from the lake. The proposed residence must also conform to the height requirements of the Ordinance.
8. No retaining walls are permitted.
9. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, any decks or patios, as well as any newly proposed sidewalks, stairs, and walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. In order to ensure the construction of the new residence does not result in adverse drainage onto adjacent properties or the Lake, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. This grading plan may be combined with the Plat of Survey required in Condition No. 10.
12. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste

disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The motion was seconded by Mr. Judson. Mr. Bartholomew voted against and the motion carried 3-1.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. It has been demonstrated, as required for a variance, that denial of the requested variances from the road setback, offset, floor area ratio and open space requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property is nonconforming to the required size and width making strict adherence to the district regulations impossible. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. In addition, variances should only be granted to accommodate physical limitations on the property and not the personal preferences or needs of the current property owner. Therefore, it is felt by the Waukesha County staff, that the recommended reduction in size of the proposed residence is reasonable and within the intent of all applicable laws. The lot is very narrow, especially as you approach the road and its overall size is less than half of what the district requires. An exposed garage level and full second story would be visually overwhelming on this property. The district requires principal structures to contain a minimum of 850 sq. ft. on the first floor and a total square footage of 1,100 sq. ft. Clearly then, it has been established that 1,100 sq. ft. is considered a reasonable use of a property in this zoning district. However, the allowable floor area ratio on this property is 15% (1,221 sq. ft.). When the property is sewered, a floor area ratio of 19.5% (1,587 sq. ft.) will be permitted. As recommended, a footprint of 1,000 sq. ft. and a total floor area of 1,587 sq. ft. (not including the basement square footage) provides a reasonable use of the property, is not unnecessarily burdensome and will permit the construction of a residence and attached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA05:073 ANTHONY WINEINGER

Mr. Schultz

I make a motion to approve the request for variances from the floodplain setback and the road setback and denial of the request for variances from the offset, height, and floor area ratio and denial of the request for a special exception from the accessory building floor area ratio requirements with the following conditions:

1. The garage must be at least 7 ft. from the side lot lines, as measured to the outer edge of the walls, with overhangs not to exceed two (2) ft. in width.
2. The garage must be at least 30 ft. from the 100-year floodplain, as measured to the outer edge of the walls, with overhangs not to exceed two (2) ft. in width.
3. The garage must be at least 10 ft. from the edge of the established right-of-way of Reddelien Road, as measured to the outer edge of the walls, with overhangs not to exceed two (2) ft. in width.
4. The garage cannot exceed 634 sq. ft. in size as measured to the outside walls, which would result in a total floor area ratio of 15%.
5. The garage may contain only one story and it must conform to the height requirements of the Ordinance. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement and only if the upper level is only accessed via pull-down stairs.
6. The garage must be constructed of similar materials as the residence and the design shall be consistent with that of the residence. The garage may not appear to be a pre-fabricated pole building

or shed.

7. No disturbance to the floodplain or the Primary Environmental Corridor is permitted.
8. Prior to the issuance of a Zoning Permit, building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures, the location and dimensions of the of the proposed garage, as well as the location of the 100-year floodplain and the Primary Environmental Corridor, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
11. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed garage, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for denial.

The reasons for the decision, as stated in the Decision Sheet, are as follows:

Floodplain setback, road setback and offset variances to permit a second detached garage on the property are warranted because the residence does not have a basement. In addition, as conditioned, the property will still be within the total floor area ratio and accessory building floor area ratio requirements of the Ordinance. The resulting floodplain setback, road setback and offset don't severely compromise the spirit and intent of the Ordinance. Variances from the floor area ratio and height and a special exception from the accessory building floor area ratio for a detached garage is not warranted because the garage can be reduced in size to meet these requirements.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:026 JOSEPH & SUSAN PECOR

Mr. Ward

I make a motion to reconsider Condition #2 of the May 12, 2004 approval of variances from the Floodplain setback, Floor Area Ratio, and Lateral Expansion in the Floodplain C-1 (EFD) District Requirements of the Waukesha County Shoreland and Floodland Protection Ordinance to permit the construction of a new single-family residence with an attached garage and decks. This reconsideration may allow the construction of a patio larger than a previously approved deck with the following conditions:

1. No first or second story decks are permitted.

2. Prior to final approval, a landscape plan must be brought before the Board of Adjustment under Old Business for review and approval. The landscape plan must then be implemented exactly as approved by the Board.

The motion was seconded by Mr. Bartholomew. Mr. Schmidt and Mr. Judson abstained and the motion carried 3-0.

BA05:046 MARK STIRMEL

Mr. *I make a motion to approve this request in accordance with the staff's recommendation, as stated in the Staff's memo, for the reasons and conditions set forth in the memo.*

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation, as stated in the Memorandum of October 12, 2005, was for approval of the request to amend Condition #2 and #4 of the July 13, 2003 approval to read:

Condition #2: "The total accessory building floor area on the property must not exceed a total of 950 sq. ft. This will provide an accessory building floor area ratio of 8.2 % and approximately 10,260 sq. ft. of open space on the property. This will also result in a total floor area ratio of 15%, which is the maximum permitted in this zoning district."

Condition #4: "The garage must conform with the height requirements of the Ordinance. The proposed garage may contain an upper-level storage area or a basement level only if the garage conforms to the height requirements."

The reasons for the recommendation are as follows:

On July 13, 2005, the Waukesha County Board of Adjustment approved Mark Stirmel's request for a special exception from the accessory building floor area ratio requirements to allow him to construct a new detached garage on the above-referenced property.

Condition #2 read as follows:

"The total accessory building floor area on the property must not exceed a total of 484 sq. ft. This will provide an accessory building floor area ratio of 4.2 % and approximately 10,260 sq. ft. of open space on the property."

Condition #4 read as follows:

"The garage must contain only one story and it must conform with the height requirements of the Ordinance, i.e. the maximum height of the garage, as measured from the lowest point of the structure to the highest point of the roof, must not exceed 18 ft. The proposed garage may contain an upper-level storage area and/or a basement level only if the garage conforms to the height requirement noted above, and only if the upper level is only accessed ONLY via pull-down stairs."

Mr. Stirmel has indicated that he would like to construct a basement level to the garage. If the basement level is not constructed, there will be a need for large retaining walls on three sides of the proposed garage due to the grades. However, the Ordinance only excludes the basement square footage from the floor area ratio calculations on principal structures; therefore, the basement square footage of the garage would need to be counted as accessory building floor area and total floor area on the property. The previous decision did not take this into account and as a result, Conditions #2 and #4 were contradictory. In addition, Mr. Stirmel has also indicated that he would like to move the garage away from the lot line in order to allow for a slightly taller garage. The approval of the request to amend conditions #2 and #4 of the Board of Adjustment Decision dated July 14, 2005, is in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Schmidt *I make a motion to adjourn this meeting at 9:35 p.m.*

The motion was seconded by Mr. Judson and carried unanimously.

Respectfully submitted,

Sheri K. Mount
Secretary, Board of Adjustment

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